TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1954

No. [redacted] 53

UNITED STATES OF AMERICA, APPELLANT,

vs.

INTERNATIONAL BOXING CLUB OF NEW YORK, INC., INTERNATIONAL BOXING CLUB, MADISON SQUARE GARDEN CORPORATION, JAMES D. NORRIS AND ARTHUR M. WIRTZ

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

FILED APRIL 27, 1954

PROBABLE JURISDICTION NOTED MAY 24, 1954

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 729

UNITED STATES OF AMERICA, APPELLANT,

vs.

INTERNATIONAL BOXING CLUB OF NEW YORK, INC., INTERNATIONAL BOXING CLUB, MADISON SQUARE GARDEN CORPORATION, JAMES D. NORRIS AND ARTHUR M. WIRTZ

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

INDEX

1 [File endorsement omitted.]

In the United States District Court, Southern District of New York

Civil Action No. 74-81

UNITED STATES OF AMERICA, PLAINTIFF,

v.

INTERNATIONAL BOXING CLUB OF NEW YORK, INC., A CORPORATION OF NEW YORK; INTERNATIONAL BOXING CLUB, A CORPORATION OF ILLINOIS; MADISON SQUARE GARDEN CORPORATION, A CORPORATION OF NEW YORK; JAMES D. NORRIS; AND ARTHUR M. WIRTZ, DEFENDANTS

COMPLAINT—Filed March 17, 1952

The United States of America, plaintiff, by its attorneys acting under the direction of the Attorney General of the United States, brings this action against the defendants and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are instituted against the defendants under Section 4 of the Act of Congress of July 2, 1890 (c. 647, 26 Stat. 209, 15 U.S.C., Sec. 4) as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, to prevent and restrain continuing violations by them, as hereinafter alleged, of Sections 1 and 2 of the Sherman Act.

2. The corporate defendants, the International Boxing Club of New York, Inc. and the adison Square Garden Corporation, maintain offices, transact business and are found within the Southern District of New York.

2 II

THE DEFENDANTS

3. International Boxing Club of New York, Inc., a corporation organized and existing under the laws of the State of New York (hereinafter referred to as "IBC (N.Y.)"), is made a defendant herein. IBC (N.Y.) maintains its offices and its principal place of business in New York City. It is engaged, among other things, in the promotion and exhibition of professional boxing contests.

4. International Boxing Club, a corporation organized and existing under the laws of the State of Illinois (hereinafter referred to as "IBC (Ill.)"), is made a defendant herein. IBC (Ill.) maintains its offices and principal place of business at Chicago, Illinois.

It is engaged, among other things, in the promotion and exhibition of professional boxing contests.

5. The Madison Square Garden Corporation (hereinafter referred to as the "Garden"), is made a defendant herein. The Garden is a corporation organized and existing under the laws of the State of New York, with its offices and principal place of business at New York City. It is engaged, among other things, in the maintenance and operation of the Madison Square Garden, the foremost sports arena in New York City, utilized for all major indoor sports including professional boxing, with a seating capacity in excess of 18,000.

6. James D. Norris, a resident of New York City, is hereby made a defendant herein.

7. Arthur M. Wirtz, a resident of Chicago, Illinois, is hereby made a defendant herein.

8. Defendants Norris, Wirtz and the Garden, respectively, are associated with, or own stock in, or hold office in the defendants IBC (N.Y.) and IBC (Ill.), as follows:

3

Deft.	Garden	IBC (N. Y.)	IBC (Ill.)
Norris	Director	President, Director and owner of 20% of outstanding shares of Class A common stock	President, Director and owner of 20% of outstanding shares of Class A common stock and of 40% of outstanding shares of Class B common stock
Wirtz	Director	Director and owner of 20% of outstanding shares of Class A common stock	Director and owner of 20% of outstanding shares of Class A common stock and of 40% of outstanding shares of Class B common stock
Garden	—	Owner of 40% of outstanding shares of Class A common stock and of 80% of outstanding shares of Class B common stock	Owner of 40% of outstanding shares of Class A common stock

In addition to the stockholdings in IBC (N.Y.) and IBC (Ill.) described above in this paragraph, 20% of the outstanding shares of Class A common stock and 20% of the outstanding shares of Class B common stock of each corporation is owned by Truman K. Gibson, Jr. and Theodore R. Jones as trustees for Joe Louis Barrow (hereinafter called "Joe Louis").

9. IBC (N.Y.) has issued 1,000 shares of Class A stock and 100 shares of Class B stock with all shares having a par value of $1.00

per share and entitled to one vote per share. Its certificate of incorporation, as amended, provides as follows:

> No dividends shall be declared or paid with respect to any share of the Class A stock unless there shall have been previously or contemporaneously declared and paid, or declared and set aside for payment, in the same fiscal year, the sum of $100.00 per share with respect to each outstanding share of Class B Stock for each $1.00 per share of dividend declared or paid with respect to the Class A Stock in said fiscal year, it being the intention that dividends shall be payable at the rate of $100.00 per share with respect to the Class B Stock for each $1.00 per share paid with respect to the Class A Stock.

4 The same provision exists in the certificate of incorporation, as amended, of IBC (Ill.) which has issued the same number of shares of stock as IBC (N.Y.).

III

Nature of Trade and Commerce Involved

10. Boxers usually compete in amateur tournaments as a preliminary to becoming professionals. As amateurs they receive no pay and box under the sponsorship of local independent boxing clubs, associations or other organizations. When they become professionals, they contract to box an opponent on a per bout basis for local promoters and receive a fee. If their skill as professional boxers results in an increasing willingness of the public to pay to view their contests, they can demand higher fees and a greater percentage of receipts from the sale of tickets and other rights. If their skill increases, they engage in preliminary and other bouts throughout the United States and eventually participate in major bouts. The fee for a major bout is usually a sum guaranteed by the promoter or a predetermined percentage of the net receipts from the sale of tickets and motion picture, radio and television rights.

11. The most lucrative asset to a professional boxer is recognition and designation by the various state athletic commissions and others as "world champion" in the division in which he competes. These divisions are:

flyweight	112 lbs.
bantamweight	118 "
featherweight	126 "
lightweight	135 "
welterweight	147 "
middleweight	160 "
light heavyweight	175 "
heavyweight	All above 175 lbs.

A "world champion" gains his title by defeating the existing champion or by eliminating all contenders, and remains world
5 champion in his division until he is, in turn, defeated by a contender or resigns the title. Such a title affords to its holder financial returns from personal appearances and exhibitions throughout the United States, from endorsements and other activities, as well as a greater percentage of the receipts from his bouts. The promotion of professional championship boxing contests is also more lucrative than the promotion of other boxing contests.

12. Of the various "world champions," the heavyweight division is the most important to boxers and promoters, as it returns the greatest financial benefits. The flyweight and bantamweight divisions are not of substantial importance in the United States because very few American boxers are of such light weights. No championship contest has been held in the flyweight division in the United States since 1935; none in the bantamweight division since 1947.

13. The promotion of professional championship boxing contests, in which the winners achieve "world champion" titles, includes negotiating and executing contracts with boxers for the main and preliminary bouts, arranging and maintaining training quarters, leasing suitable arenas, such as stadia or ball parks where substantial numbers of the public may be seated to view the contest, negotiating and executing contracts for the employment of matchmakers, advertising agencies, press agents, seconds, referees, judges, announcers and other personnel; organizing, assembling, and arranging other details necessary to the exhibition of the contests; selling tickets and rights to make motion pictures of the contests and to distribute them throughout the United States and in foreign countries; and selling rights to transmit the contests by radio or television throughout the United States and foreign countries.

14. Promoters of professional championship boxing con-
6 tests make a substantial utilization of the channels of interstate trade and commerce to:

(a) negotiate contracts with boxers, advertising agencies, seconds, referees, judges, announcers, and other personnel living in states other than those in which the promoters reside;

(b) arrange and maintain training quarters in states other than those in which the promoters reside;

(c) lease suitable arenas, and arrange other details for boxing contests, particularly when the contests are held in states other than those in which the promoters reside;

(d) sell tickets to contests across state lines;

(e) negotiate for the sale of and sell rights to make and distribute motion pictures of boxing contests to the 18,000 theatres in the United States;

(f) negotiate for the sale of and sell rights to broadcast and telecast boxing contests to homes through more than 3,000 radio stations and 100 television stations in the United States; and

(g) negotiate for the sale of and sell rights to telecast boxing contests to some 200 motion picture theatres in various states of the United States for display by large-screen television.

15. Motion picture films of professional championship boxing contests are distributed and exhibited in theatres throughout the United States and in foreign countries. Similarly, radio and television broadcasts of such contests are transmitted throughout the United States and radio broadcasts of them are also transmitted to foreign countries.

7 16. The 21 major professional championship boxing contests promoted in the United States since June 1949 have produced a gross income from admissions and the sale of motion picture, radio and television rights of approximately $4,500,000.00. The total such gross income for all professional boxing contests in the United States during this period, including the championship contests, has been approximately $15,000,000.00.

IV

Offenses Charged

17. Beginning in or about January 1949, the exact date being unknown to the plaintiff, and continuously thereafter up to and including the date of the filing of this complaint, the defendants have been and now are engaged in an unlawful combination and conspiracy in unreasonable restraint of and to monopolize the above described interstate and foreign trade and commerce in the promotion, exhibition, broadcasting, telecasting, and motion picture production and distribution of professional championship boxing contests in the United States, and have monopolized said trade and commerce, in violation of Sections 1 and 2 of the Sherman Act. The defendants threaten to continue such offenses and will continue them unless the relief hereinafter prayed for in this complaint is granted.

18. The aforesaid combination and conspiracy, which has resulted in the said monopolization, has consisted of a continuing agreement and concert of action among the defendants to exclude others from the promotion and exhibition of and the sale of radio, television and motion picture rights in professional championship boxing contests in the United States.

19. To effectuate said offenses, the defendants have done those things which they combined and conspired to do, including in part

the acts, means, methods, contracts, agreements and understandings hereinafter more fully set forth and described.

8 20. In or about January 1949 these defendants entered into understandings and agreements among themselves and with Joe Louis, then heavyweight champion of the world, under the terms of which Joe Louis agreed to retire from active boxing, resign the title of heavyweight champion of the world, procure the exclusive rights to the services of the four leading contenders for the heavyweight title in a series of elimination contests which would result in the recognition of a new heavyweight champion of the world, and assign these exclusive rights to defendants. The understandings and agreements also provided that Joe Louis was to receive $150,000 from these defendants and was to receive stock in the corporations which were to be formed by these defendants.

21. Contracts were entered into between Joe Louis Enterprises, Inc. (hereinafter referred to as "Enterprises"), an Illinois corporation in which Joe Louis owned the majority stock interest, and Joe Walcott, Ezzard Charles, Lee Savold and Gus Lesnevich, the then leading contenders for Louis' heavyweight title, on or about February 14, 1949. These contracts provided, among other things, that the exclusive services of Walcott, Charles, Savold and Lesnevich were to be rendered to Enterprises or its assignee and that an elimination professional contest was to be conducted among them for the heavyweight championship of the world in contests staged in the United States or elsewhere throughout the world. The contracts also provided that Enterprises, or any party or corporation designated by it, was to have the exclusive right to broadcast any of the contests, both in radio and television, and the exclusive right to arrange for the production and distribution of motion picture films of said contests.

22. Thereafter Joe Louis resigned his title as heavyweight champion of the world and, through agreements and understandings entered into among the defendants and with others, there were formed the defendant corporations IBC (N.Y.) and IBC (Ill.).

9 The contracts referred to in paragraph 21 of this complaint were assigned to the defendant IBC (Ill.); $150,000 was paid to Joe Louis; and the elimination heavyweight championship contests were promoted by the defendants.

23. About May 27, 1949 IBC (N.Y.) acquired and eliminated the leading competing promoter of championship matches, Tournament of Champions, Inc. (hereinafter referred to as "Champions"), a corporation organized in the State of New Jersey qualified to do business in New York, and the owner of all issued and outstanding stock of Sporting Events, Inc., a corporation of the State of New York licensed to promote boxing contests in the State of New York. Champions and Sporting Events, Inc. had been engaged in the pro-

motion of professional championship boxing. By said purchase the defendants, through IBC (N.Y.), acquired the following:

(a) An exclusive lease dated March 15, 1949, to promote professional boxing at the Polo Grounds, New York City, which was secured by a deposit of $50,000;

(b) A contract between Champions and Marcel Cerdan to engage in a world's championship middleweight bout with Tony Zale;

(c) A similar contract with Tony Zale to engage in such a bout;

(d) A contract with Ray Robinson dated April 1949 fixing a match with Kid Gavilan for the world's welterweight championship.

24. At the time IBC (N.Y.) was formed, the defendants, through leases, agreements, understandings, and through stock ownership in corporations, possessed the exclusive right to promote professional boxing contests at the following arenas, which except for Yankee Stadium in New York City, are the principal arenas where professional championship boxing contests can successfully be presented:

Polo Grounds	New York
Madison Square Garden	New York
St. Nicholas Arena	New York
Chicago Stadium	Chicago
Detroit Olympia	Detroit
St. Louis Arena	St. Louis

25. On July 15, 1949, IBC (N.Y.) acquired the exclusive right to promote professional boxing contests in the Yankee Stadium, and extended its exclusive rights to the Polo Grounds until December 31, 1952.

26. The defendants, after the formation of IBC (N.Y.) and IBC (Ill.), promoted professional championship boxing contests through these corporations in all weight divisions except the bantam weight and flyweight. In the promotion of each such contest, the contender for the title was required, as a condition of being afforded an opportunity to acquire the title, to agree with the promoter (either IBC (N.Y.) or IBC (Ill.), among other things, that:

(a) Should he be declared the winner and gain the title, he would, for a period of three years (or five years in some cases), commencing from the time he was declared the winner, render his services as a professional boxer in title contests exclusively to the defendant promoter, and would engage in title contests

only under its promotion or that of a party or corporation designated by it, or with which it is or may be affiliated;

(b) Should he lose his title before the expiration of the three years, he agreed to box at least twice thereafter for the defendant promoter, or its designees; and

(c) Should he win the title, he would engage in a return title contest with the deposed champion within 90 days under the promotion of the defendant promoter or its designee.

27. The defendants, through IBC (N.Y.) and IBC (Ill.), have promoted or participated in the promotion of all but two of the 21 professional championship boxing contests held in the United States since June 1949.

11

V

Effects

28. The aforesaid combination and conspiracy, and monopolization has had the following effects:

(a) Promoters of boxing contests, other than defendants, have been almost entirely excluded from engaging in the business of promoting professional championship boxing contests except with the consent of defendants;

(b) Boxers have been denied a chance to compete for world championships except under conditions that prevented them, if they won, from securing the benefits of competition among promoters desiring their services to present professional championship boxing contests; and

(c) The benefits of competition among promoters of professional championship boxing contests have been denied to:

(1) manufacturers and distributors of motion pictures of such contests;

(2) radio and television broadcasters and stations;

(3) the public attending such contests, seeing them in motion pictures or television, or hearing them by radio;

(4) the owners of arenas other than those owned by defendants.

Prayer

Wherefore, plaintiff prays:

1. That the Court adjudge and decree that the defendants and each of them have combined and conspired to restrain and to monopolize, and have restrained and monopolized, interstate and foreign

trade and commerce, as hereinbefore alleged, in violation of Sections 1 and 2 of the Sherman Act, and that defendants be enjoined and restrained from continuing such violations or committing other violations of like character or effect.

12 2. That the Court adjudge and decree that the defendants have used the agreements referred to in paragraph 26 of this complaint and their financial and contractual interests in and control over arenas and organizations engaged in the promotion of professional championship boxing contests, as hereinabove described, unlawfully in instituting, effectuating and maintaining the aforesaid violations of Sections 1 and 2 of the Sherman Act.

3. That the Court order and direct the cancellation and termination of the agreements referred to in paragraph 26 of this complaint, and that the defendants be enjoined and restrained from enforcing such agreements and from entering into any agreements of like character or effect.

4. That defendant Garden be enjoined from leasing its arena exclusively for professional championship boxing contests to any promoter of such contests, and from discriminating against any promoter desiring to lease said arena for a professional championship boxing contest.

5. That defendants Norris and Wirtz be ordered and directed to cause the arenas listed in paragraph 24 of this complaint, as long as any of such arenas are controlled by these defendants, directly or indirectly, to refrain from leasing their facilities exclusively for professional championship boxing contests to any promoter of such contests, and to refrain from discriminating against any promoter desiring to lease any of such facilities for a professional championship boxing contest.

6. That the Court enter such further orders regarding the aforesaid interests in and control over arenas and organizations engaged in the promotion of professional championship boxing contests as may be necessary and appropriate in order to dissipate the effects of the violations alleged herein and to restore free and open competition in the trade and commerce in the promotion, exhibition, broadcasting, telecasting, and motion picture production and distribution of professional championship boxing contests.

1. That pursuant to Section 5 of the Sherman Act, an order be be made and entered herein requiring such of the defendants
13 as are not within this District to be brought before the Court in this proceeding as parties defendant, and directing the Marshals of the Districts in which they severally reside or are found to serve the summons upon them.

2. That the plaintiff have such other, further and different relief as the nature of the case may require and the Court may deem just and proper in the premises.

9. That the plaintiff recover its taxable costs.

Dated: New York, N. Y. March 17, 1952.

(S.) J. HOWARD MCGRATH,
Attorney General.

(S.) H. G. MORRISON,
Assistant Attorney General.

(S.) MYLES J. LANE,
United States Attorney.

(S.) MELVILLE C. WILLIAMS,
per HL.

(S.) HAROLD LASSER,
Special Assistants to the Attorney General.

(S.) HAROLD J. MCAULEY,
Trial Attorney.
per HL.

14 In the United States District Court
Southern District of New York

[Title omitted]

Notice of motion to dismiss and granting thereof—filed January 15, 1954.

SIRS:

PLEASE TAKE NOTICE that upon the summons and complaint, heretofore filed herein, the undersigned will move this Court, at a Stated Term thereof for the hearing of motions, to be held in and for the Southern District of New York, in Room 506 of the United States Court House, Foley Square, Borough of Manhattan, City, County and State of New York, on the 22nd day of December, 1953, at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for an order dismissing the complaint herein pursuant to Rule 12(b) of the Federal Rules of Civil Procedure—

(1) for lack of jurisdiction over the subject matter;

(2) for failure to state a claim upon which relief can be granted; and

15-16 (3) for such other, further and different relief as to the Court may seem just and proper.

Dated, New York, N. Y. December 2, 1953.

Yours etc.,

SIMPSON THACHER & BARTLETT,
By BENJAMIN C. MILNER,
a Partner.
Office and Post Office Address,
120 Broadway,
New York 5, N. Y.
Attorneys for Defendants, International Boxing Club of New York, Inc., and Madison Square Garden Corporation.

PEABODY, WESTBROOK, WATSON and STEPHENSON,
By CHARLES H. WATSON,
a Partner.
10 South LaSalle Street,
Chicago, Illinois.

REID & PRIEST,
By RALPH M. MCDERMID,
a Partner.
2 Rector Street,
New York 6, N. Y.
Attorneys for Defendants, International Boxing Club, Inc., an Illinois corporation, James D. Norris and Arthur M. Wirtz.

TO:

STANLEY N. BARNES, Esq.,
Assistant Attorney General,
RICHARD B. O'DONNELL, Esq.,
HAROLD LASSER, Esq.,
Special Assistants to the Attorney General,
Room 235, U. S. Court House,
Foley Square,
New York 7, N. Y.
Attorneys for the Plaintiff.

17 Noonan, J. Motion Cal. No 63. Date: 2-4-54. Argued before Noonan, J. On 2-4-54. Granted. Settle order on notice.

(S.) GREGORY F. NOONAN,
United States District Judge.

18 [File endorsement omitted]

In the United States District Court, Southern District of New York

[Title omitted]

STIPULATION AMENDING COMPLAINT AND ORDER THEREON—January 7, 1954

It is hereby stipulated and agreed by and between the undersigned:

1. That the plaintiff may and hereby does amend its complaint filed March 17, 1952, by adding thereto a paragraph 16(a) which alleges:

> "16(a) A promoter of a professional championship fight usually derives substantially all of his revenue from two sources: (a) the sale of tickets of admission and (b) sale of rights to telecast, broadcast and produce and distribute motion pictures of the fight. In such fights, sale of television, radio and motion picture rights account for a substantial proportion of the promoter's total revenue. Since 1949 sale of these rights has represented, on the average, over 25% of the total revenue derived from championship fights, and has exceeded, in some instances, the revenue received from sale of tickets of admission. With the progressive and continuing expansion of television facilities, the proportion of the promoter's total revenue derived from television, radio and motion pictures, has been on an ascending curve, in relation to revenue derived from sale of tickets of admission. In the Marciano-Wolcott heavyweight championship fight of May 15, 1953, at Chicago, Illinois, promoted by defendants IBC (N.Y.), IBC (Ill.), James D. Norris and Arthur M. Wirtz, the promoters' receipts from sale of tickets of admission were, after federal admission taxes, $253,462.37, while their television, radio and motion picture revenue was approximately $300,000."

19-20 2. That the complaint filed March 17, 1952, as so amended, shall be referred to hereafter as the "amended complaint";

3. That the defendants' pending motion to dismiss for lack of jurisdiction of the subject matter and for failure to state a claim upon which relief can be granted, and their memorandum submitted in support thereof, shall be deemed to have been made to the said amended complaint without any necessity for renewing or amending said motion or resubmitting such memorandum; and

4. That the consent of the defendants to the amendment of the complaint by the addition of said paragraph 16(a), and their failure

to plead to the allegations contained in said paragraph, shall not be deemed to be admissions by them of the truth, materiality or relevance of said allegations, and, if so advised, the defendants may serve amended answers to the amended complaint at any time prior to the expiration of the twentieth day after the final determination of the pending motion, including any appellate proceedings involving such motion.

Dated New York, N. Y., January 7, 1954.

HAROLD LASSER,
Attorney for Plaintiff.

SIMPSON, THACHER & BARTLETT,
Attorneys for Defendants, International Boxing Club of New York, Inc., and Madison Square Garden Corporation.

PEABODY, WESTBROOK, WATSON & STEPHENSON,
REID & PRIEST,
Attorneys for Defendants, International Boxing Club, Inc., an Illinois Corporation, James D. Norris and Arthur M. Wirtz.

So Ordered: 1/7/54.
——— J. RYAN,
U. S. D. J.

21 [File endorsement omitted]

In United States District Court, Southern District of New York

UNITED STATES OF AMERICA, PLAINTIFF,

v.

INTERNATIONAL BOXING CLUB OF NEW YORK, INC., A CORPORATION OF NEW YORK; INTERNATIONAL BOXING CLUB, A CORPORATION OF ILLINOIS; MADISON SQUARE GARDEN CORPORATION OF NEW YORK; JAMES D. NORRIS; AND ARTHUR M. WIRTZ, DEFENDANTS.

ORDER DISMISSING COMPLAINT—February 8, 1954

At New York, New York in said District on February 8th, 1954.

Defendants having moved this Court, by notice of motion dated December 2, 1953, to dismiss this action for lack of jurisdiction over the subject matter and for failure to state a claim upon which relief can be granted, and said motion having regularly come on to be heard on February 4, 1954,

Now, on reading and filing the summons and complaint and the Marshal's return herein, the stipulation dated January 7, 1954

amending the complaint herein, the notice of motion dated December 2, 1953, and after hearing Messrs. Simpson, Thacher & Bartlett (Whitney North Seymour, Esq., of counsel) and Messrs. Peabody, Westbrook, Watson & Stephenson (Charles H. Watson, Esq., of counsel) for the defendants in support of said motion, and Harold Lasser, Esq., of counsel for plaintiff, in opposition thereto, and it appearing to the Court that it lacks jurisdiction of the subject
22-23 matter of this action and that the complaint herein, as amended, fails to state a claim upon which relief can be granted, it is hereby

ORDERED, ADJUDGED AND DECREED that the defendants' motion be and the same hereby is granted in all respects, and it is further

ORDERED, ADJUDGED AND DECREED that the complaint herein be and it hereby is dismissed.

GREGORY S. NOONAN,
U. S. D. J.

24 In United States District Court

[Title omitted]

DOCKET ENTRIES

Date	Filings—Proceedings	Attorneys Pltf.	Attorneys Deft.
Mar. 17–52	Filed complaint and issued original and additional summons.		
Apr. 8–52	Filed stip & order extending time of defts. International Boxing Club of N. Y. Inc. and Madison Squ. Garden Corp. to answer to 5–8–52—Noonan J.		
Apr. 9–52	Filed stip & order extending time to answer to 5–8–52.		
Apr. 11–52	Filed copy of complaint.		
Apr. 11–52	Filed copy of complaint.		
Apr. 11–52	Filed summons & return, served Edwin Lee, Treas. Madison Sq. Gard. Corp.; 3–19–52; and for International Boxing Club of N. Y. 3–19–52; Harry Markson for James D. Norris, 4–8–52.		
Apr. 17–52	Filed add. summons & return, served Truman Gibson Secy to Int. Box. Club 3–21–52; unable to find Arthur Wirtz.		
May 7–52	Filed stip. & order extending time of defts. Internat'l Boxing, et al to answer to 6–9–52—Weinfeld, J.		
June 9–52	Filed answer of deft. International Boxing Club of N. Y.		ST&B
June 9–52	Filed answer of deft. Madison Square Garden Corp.		ST&B
25			
June 9–52	Filed answer of defts James D. Norris & Arthur M. Wirtz.		R&P
June 9–52	Filed answer of deft Internat'l Boxing Club, Inc. (Illinois Corp.).		R&P
June 26–52	Filed note of issue for trial.		

Date	Filings—Proceedings	Attorneys Pltf.	Attorneys Deft.
Apr. 28-53	Filed affdvt & notice of motion for preference—Memo endorsed 4-24-53—Set case head Trial Cal. for 12-7-53—Knox, Ch. J.	x	
Apr. 28-53	Filed supporting affdvt.	x	
Apr. 28-53	Filed opposing affdvt.		x
Sept. 25-53	Filed notice of taking depositions.	x	
Oct. 8-53	Filed affdvt & notice of motion to reset dates of pretrial conference & trial—Pretrial reset for 1-11-54. Trial re-set foot of Day Cal. for Jan. 1954, etc.—Knox, Ch. J.		
Oct. 8-53	Filed opposing affdvt.		x
Oct. 8-53	Filed stip. resetting dates of first pretrial conference, etc.		
Jan. 8-54	Filed stip. & order amending complaint—Ryan, J.		
Jan. 12-54	Filed stip. & order adjourning pretrial without date and marking case off calendar subject, etc.—Knox, Ch. J.		
Jan. 15-54	Filed notice of motion re: to dismiss. Ret. 12/22/53.		
Jan. 16-54	Filed stip. & order adjourning notice of motion to 2/2/54. Ryan, J.		
Feb. 4-54	Memo endorsed on motion filed 1-15-54—Granted—Settle order on notice—Noonan, J.		
Feb. 8-54	Filed order dismissing complaint—Noonan, J.—Mailed notice of entry 2-9-54.		
Mar. 12-54	Filed Petn. for appeal. Order allowing appeal to U. S. Sup. Court (Noonan, J.) USA. Mailed Notice of Entry 3-16-54.		
Mar. 12-54	Filed Citation, USA.		
Mar. 12-54	Filed Statement Rule 12(3); Assignment of Errors; Praecipe; Statement as to Jurisdiction USA.		
Mar. 12-54	Filed Proof of Service (of above papers on appeal).		
Mar. 19-54	Filed affdvt & notice of motion to strike items 2 & 3 from praecipe, etc.—ret. 3-25-54.		
Mar. 26-54	Filed motion addressed to Supreme Court, US, to affirm judgment of District Court.		
Apr. 8-54	Memo endorsed on motion filed 3-19-54—Referred to Noonan, J.—I. R. Kaufman, J.		
Apr. 21-54	Filed stip. & order extending time to file appeal record to 5-6-54—Noonan, J.		
Apr. 23-54	Filed Opinion #21071. Motion to strike portions of praecipe granted—So ordered. Noonan, J.—Mailed notice of entry 4-23-54.		

26 Clerk's Certificate to foregoing paper omitted in printing.

27 In the United States District Court for the Southern District of New York

[Title omitted]

PETITION FOR APPEAL—Filed March 12, 1954

The United States of America, plaintiff in the above-entitled cause, considering itself aggrieved by the final decree of this Court entered on the eighth day of February, 1954, does hereby pray an

appeal from said final decree to the Supreme Court of the United States. Pursuant to Rule 12 of the Rules of the Supreme Court, the plaintiff presents to this Court herewith a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in this cause.

The particulars wherein the plaintiff considers the order erroneous are set forth in the assignment of errors and prayer for reversal accompanying this petition and to which reference is hereby made.

The plaintiff prays that its appeal may be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings, and documents upon which said final decree was based, duly authenticated, be sent to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

STANLEY N. BARNES,
Assistant Attorney General.

HAROLD LASSER,
Special Assistant to the Attorney General.

Dated this 12th day of March, 1954.

28-30 [File endorsement omitted]

In the United States District Court for the Southern District of New York

[Title omitted]

ORDER ALLOWING APPEAL—Filed March 12, 1954

In the above-entitled cause, the United States of America, plaintiff, having made and filed its petition praying an appeal to the Supreme Court of the United States from the final decree of this Court in this cause entered on the eighth day of February, 1954, and having also made and filed its petition for appeal, assignment of errors and prayer for reversal, and statement of jurisdiction, and having in all respects conformed to the statutes and rules in such cases made and provided,

IT IS THEREFORE ORDERED AND ADJUDGED

That the appeal be and the same is hereby allowed as prayed for.

GREGORY F. NOONAN,
United States District Judge.

Dated this 12th day March, 1954.

31-33 Citation in usual form showing service on Simpson, Thacher & Bartlett, et al., omitted in printing.

34 In the United States District Court
For the Southern District of New York

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed March 12, 1954

The United States of America, plaintiff in the above-entitled cause, in connection with its petition for appeal to the Supreme Court of the United States, hereby assigns error to the record and proceedings and the entry of the final judgment of the district court on February 8, 1954, in the above-entitled cause, and says that in the entry of the final judgment the district court committed error to the prejudice of the plaintiff in the following particulars:

1. The court erred in holding that, on the facts alleged, there is no valid distinction between this case and the *Federal Baseball* case (259 U. S. 200) and the *Toolson* case (346 U. S. 356).

2. The court erred in holding that the Supreme Court in the *Federal Baseball* and *Toolson* cases laid down a broad principle which takes all professional sports, no matter how conducted, out of the Sherman Act.

3. The court erred in adjudging that the complaint fails to state a claim upon which relief can be granted.

4. The court erred in entering judgment dismissing the complaint.

35 Wherefore, plaintiff prays that the final judgment of the district court may be reversed to the extent that it is inconsistent with the errors herein assigned by the plaintiff, and for such other and fit relief as to the court may seem just and proper.

STANLEY N. BARNES,
Assistant Attorney General.
HAROLD LASSER,
Special Assistant to the Attorney General.

Dated this 12th day of March, 1954.

36 STATEMENT CALLING ATTENTION TO THE PROVISIONS OF SUPREME COURT RULE 12(3)

(Omitted in Printing)

37 In the United States District Court for the Southern District of New York

[Title omitted]

PRAECIPE—Filed March 12, 1954

To: The Clerk, United States District Court, Southern District of New York.

The appellant hereby directs that, in preparing the transcript of the record in the above-entitled cause for its appeal to the Supreme Court of the United States, you include the following:

1. Complaint.
2. Answers of all defendants.
3. Motion for preference on non-jury civil trial calendar filed April 28, 1953, affidavits attached to notice of motion, and supplemental affidavits filed on April 28, 1953.
4. Defendants' motion to dismiss the complaint.
5. Stipulation amending complaint filed January 8, 1954.
6. Order dismissing complaint entered February 8, 1954.
7. Copy of all docket entries.
8. Petition for Appeal.
9. Order Allowing Appeal.
10. Citation on Appeal.
11. Assignment of Errors.

38-40 12. Statement of Jurisdiction of the Supreme Court of the United States.

13. Statement of Appellant Calling Attention to Rule 12(3) of the Rules of the United States Supreme Court.
14. Proof of Service.
15. This Praecipe.

STANLEY N. BARNES,
Assistant Attorney General.
HAROLD LASSER,
Special Assistant to the Attorney General.

Dated this 12th day of March, 1954.

41-43 PROOF OF SERVICE

(Omitted in Printing)

44 [File endorsement omitted]

In United States District Court, Southern District of New York
[Title omitted]

[Title omitted]

NOTICE OF MOTION—To strike Items 2 and 3 from Praecipe—Filed March 19, 1954

Sirs:

Please take notice that upon the annexed affidavit of Benjamin C. Milner, the undersigned will move this Court at a Stated Term thereof for the hearing of motions to be held in and for the Southern District of New York, in Room 506 of the United States Court House, Foley Square, Borough of Manhattan, City, County and State of New York, on the 25th day of March, 1954, at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for an order, pursuant to Rule 10 of the Rules of the United States Supreme Court and Section (e) of Rule 75 of the Rules of Civil Procedure, striking from the praecipe dated March 12, 1954, heretofore filed herein, items No. 2 and 3 thereof and for such other, further and different relief as to the Court may
45 seem just and proper.

Dated, New York, N. Y.
March 19, 1954.

Yours, etc.,

SIMPSON, THACHER & BARTLETT,
By BENJAMIN C. MILNER, *a Partner*,
Office and Post Office Adddress,
120 Broadway,
New York 5, N. Y.
Attorneys for Defendants, International Boxing Club of New York, Inc., and Madison Square Garden Corporation.

PEABODY, WESTBROOK, WATSON AND STEPHENSON,
By CHARLES H. WATSON, *a Partner*,
10 South LaSalle Street,
Chicago, Illinois.

REID & PRIEST,
By RALPH MCDERMID, *a Partner*,
2 Rector Street,
New York 6, N. Y.
Attorneys for Defendants, International Boxing Club, Inc., an Illinois corporation, James D. Norris and Arthur M. Wirtz.

To:

STANLEY E. BARNES, ESQ.,
Assistant Attorney General,
RICHARD B. O'DONNELL, ESQ.,
HAROLD LASSER, ESQ.,
Special Assistants to the Attorney General,
Room 235, U. S. Court House,
Foley Square,
New York 7, N. Y.
Attorneys for the Plaintiff.

46 AFFIDAVIT

State of New York,
County of New York, ss:

BENJAMIN C. MILNER, being duly sworn, deposes and says:

I am an attorney and a member of the firm of Simpson, Thacher & Bartlett, attorney, for defendants International Boxing Club of New York, Inc. and Madison Square Garden Corporation, and I am familiar with all the proceedings heretofore had in this action. On Friday, March 12, 1954, plaintiff served upon counsel for all defendants herein various papers relating to an appeal by plaintiff to the Supreme Court of the United States from the order of this Court (Hon. Gregory F. Noonan, D. J.), dated February 8, 1954, dismissing the complaint herein for lack of jurisdiction of the subject matter of the action and for failure to state a claim upon which relief can be granted.

47 Among the papers so served was a praecipe indicating the portions of the record to be incorporated by the Clerk of this Court into the transcript, as required by Rule 10 of the Rules of the Supreme Court. Among the items designated in said praecipe are the following:

"2. Answers of all defendants.

"3. Motion for preference on non-jury civil trial calendar filed April 28, 1953, affidavits attached to notice of motion and supplemental affidavits filed on April 28, 1953."

Defendants object to the inclusion of the above items in the transcript of record to be transmitted to the Supreme Court on the ground that said items are not essential to the decision of the questions presented by the appeal and therefore must be omitted under Section (e) of Rule 75 of the Federal Rules of Civil Procedure, which Section (e) is applicable to appeals to the Supreme Court from a district court. (See Rule 10 of the Supreme Court Rules).

The papers described in items "2" and "3" above were not before the District Court upon the motion resulting in the order here ap-

pealed from, as clearly appears from the face of said order. The only papers before the Court on such motion were the summons and complaint, the Marshal's return of service, the stipulation dated January 7, 1954 amending the complaint and defendants' notice of motion. As appears from its face, the motion resulting in the order appealed from was directed to the complaint alone. The inclusion in the record for appeal purposes of documents which this Court did not and could not consider in
48-49 connection with such motion is not only not essential to the determination of the questions presented by the appeal but is obviously improper as tending to mislead the appellate court concerning the basis of this Court's action.

WHEREFORE, deponent respectfully requests this Court to make and enter an order herein striking from the praecipe dated March 12, 1954 heretofore filed with the Clerk of this Court, items "2" and "3" thereof and for such other and further relief as may be just and proper.

Sworn to before me this 19th day of March, 1954.

BENJAMIN C. MILNER.

ROBERT S. CARLSON, Notary Public, State of New York, qualified in Westchester County, No. 60-0570175. Certificate filed with New York Co. Clk. Commission expires March 30, 1955.

50 April 8, 1954.

Respectfully referred to Judge Noonan.

IRVING R. KAUFMAN,
U. S. D. J.

Opinion # 21071, Noonan, J.

51-53 [File endorsement omitted]

In the United States District Court for the Southern District of New York

[Title omitted]

STIPULATION AND ORDER EXTENDING TO FILE RECORD—Filed April 21, 1954

It appearing that this Court has not rendered its decision with respect to the motion before it to strike certain items from the praecipe dated March 12, 1954, and it further appearing that counsel for the appellees having agreed to extend the time for filing the transcript of record on appeal from April 21, 1954 to May 6, 1954,

NOW THEREFORE, IT IS stipulated and agreed by and among the

parties hereto that the time for filing such record of transcript on appeal be and the same is extended to May 6, 1954.

Dated: New York, N. Y. April 20, 1954.

HAROLD LASSER,
Attorney for Plaintiff.

SIMPSON, THACHER & BARTLETT,
Attorneys for Defendants, International Boxing Club of New York, Inc., and Madison Square Garden Corporation.

PEABODY, WESTBROOK, WATSON & STEPHENSON,
REID & PRIEST,
Attorneys for Defendants, International Boxing Club, Inc., an Illinois corporation, James D. Norris and Arthur M. Wirtz.

So Ordered: 4-21-54.

GREGORY F. NOONAN,
U. S. D. J.
W. V. C.

54 [File endorsement omitted]

In the United States District Court, Southern District of New York

UNITED STATES OF AMERICA, PLAINTIFF,

v.

INTERNATIONAL BOXING CLUB OF NEW YORK, INC., a corporation of New York; INTERNATIONAL BOXING CLUB, a corporation of Illinois; MADISON SQUARE GARDEN CORPORATION, a corporation of New York; JAMES D. NORRIS; and ARTHUR M. WIRTZ, DEFENDANTS.

Memorandum

Civ. 74-81

OPINION ON MOTION TO STRIKE ANSWERS AND MOTION FOR PREFERENCE—Filed April 22, 1954

NOONAN, District Judge.

On February 4, 1954, this Court granted a motion made by the respondents to dismiss the complaint in this action for lack of jurisdiction of the subject matter of the action and for failure to state a claim upon which relief could be granted. This decision was rendered from the bench after oral argument, and an order

entered February 8, 1954, pursuant to that decision, is now the subject of an appeal to the Supreme Court of the United States.

Despite the fact that the order itself states that the decision of the court was based on "* * * the summons and complaint and the Marshal's return herein, the stipulation dated January 7, 1954 amending the complaint herein, the notice of motion dated December 2, 1953, and after hearing counsel * * *" (for both sides), the plaintiff seeks to include two other items in the praecipe. These two items, which are the subject of this motion to strike, are (1) the answers of the parties, and (2) the papers connected with an earlier motion for a preference.

55

Two specific problems are thus before this court: whether these two items are properly a part of the record; and, if not, whether this court has the authority to strike them.

On the first question, it is the opinion of this court that the items attacked are not properly part of the "record" for purposes of appeal. They did not form a part of the papers on which the decision was based nor was reference made to them on the argument. Although they were in the file of the case, they were never "before" the court during the course of the argument on the motion to dismiss.

The purpose of an appeal is to correct an error or errors made in the court below. In the instant case, that would entail a showing that the complaint in the action does state a claim upon which relief could be granted, and that this court does have jurisdiction over the subject matter. Unless both grounds for dismissal are found to be in error, the action must stand as dismissed.

Looking to the question of whether or not the complaint states a claim upon which relief can be granted, it is clear that neither answers, nor affidavits filed in connection with an unrelated motion can bear out the sufficiency of the complaint. It must stand or fall on its own merits.

56

Both because these matters were never before this court when it was called upon to make its decision, and because they are not relevant to the sufficiency of the complaint, the inclusion of these disputed items in the praecipe is neither necessary nor proper. They do not form a material part of the record, nor do they properly reflect what occurred in this court.

Accordingly, it is the opinion of this court that the motion to strike should be granted if this court has the power so to do.

Rule 10(2) of the Revised Rules of the Supreme Court of the United States (Title 28, U. S. Code) provides that the clerk of the lower court shall forward to the Supreme Court * * * * a true copy of the material parts of the record * * * *. The praecipe is authorized to enable the clerk to do so and * * * * for the purpose of reducing the size of transcripts and eliminating all papers not

necessary to the consideration of the questions to be reviewed * * * *. The rule then goes on to incorporate by reference Sections (c), (e), and (h) of Rule 75 and Rule 76 of the Rules of Civil Procedure (Title 28 U. S. Code).

Of those portions of Rule 75 and Rule 76 of the Rules of Civil Procedure incorporated by reference into Rule 10 of the
57 Supreme Court Rules, only Rules 75 (e) and (h) are applicable to the instant situation.

Rule 75 (e) entitled "Record To Be Abbreviated", opens with the sentence "All matter not essential to the decision of the questions presented by the appeal shall be omitted."

Rule 75 (h) is entitled "Power of Court to Correct or Modify Record" and provides that "* * * if any difference arises as to whether the record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record made to conform to the truth."

It is essentially the wording of this last paragraph on which rests the authority of this court to grant the motion to strike the disputed items from the praecipe.

In 1886, in the case of *Hoe* v. *Kahler*, Circ. Ct. S. D. N. Y., 27 Fed. 145, 146, the court stated, "* * * a direction of this court in a doubtful case, where the clerk is requested to insert in the transcript by one party what he is requested to leave out by the other, would seem to be proper."

In the case of *U. S.* v. *City of Brookhaven*, 1943, 134 F. 2d 442, 446, rehearing denied, the court, referring to the inclusion in the record on appeal of a deposition taken, but never introduced into evidence in the lower court, stated:

> "Unless someone offered it in evidence on the trial it was not evidence in the case, nor was it proper to be transmitted as such with the record on appeal. When designated by appellees to be certified and sent up as a part of such record, appellant should have applied to the district court under the first
> 58 sentence of Rule 75 (h) to have the deposition excluded as not having been introduced and considered in the trial."

In the instant case, the items in dispute were not introduced or considered in the determination of the motion. The appellees have moved to strike them from the praecipe. For all of the above reasons, the motion is granted.

So ordered.

Dated, New York, N. Y. April 22, 1954.

GREGORY F. NOONAN,
U. S. D. J.

59 Clerk's Certificate to foregoing transcript omitted in printing.

No. 729

60-61 In the Supreme Court of the United States

October Term, 1953

UNITED STATES OF AMERICA, APPELLANT,

v.

INTERNATIONAL BOXING CLUB OF NEW YORK, INC., ET AL.

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—Filed May 6, 1954

1. Appellant adopts for its statement of points upon which it intends to rely in its appeal to this Court the points contained in its Assignment of Errors heretofore filed.

2. Appellant designates for printing by the Clerk of this Court the record as filed in this Court pursuant to appellant's praecipe to the clerk of the United States District Court for the Southern District of New York, except Items 2, 3, ten, twelve, thirteen and fourteen of said praecipe.

SIMON E. SOBELOFF,
Solicitor General.

May 6, 1954

62 [File endorsement omitted]

63 In the Supreme Court of the United States

No. 729 —, October Term, 1953

[Title omitted]

APPEAL from the United States District Court for the Southern District of New York.

ORDER NOTING PROBABLE JURISDICTION—Filed May 24, 1954

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Mr. Justice Jackson took no part in the consideration or decision of this question.

☆ U. S. GOVERNMENT PRINTING OFFICE 1954 902209 1479